



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Educational Planning & Advice, Inc.

File: B-274513

Date: November 5, 1996

Katja M. Ognyanovich for the protester.

Nicholas P. Retson, Esq., and Thomas J. Duffy, Esq., Department of the Army, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Postponing the date set for bid opening is within the contracting officer's discretion. Determination to proceed with bid opening despite a hurricane emergency does not constitute an abuse of discretion where the agency was able to remain open for business through bid opening and four bids were timely received.

DECISION

Educational Planning and Advice, Inc. (EPA) protests the Department of the Army's refusal to postpone bid opening for invitation for bids (IFB) No. USZA92-96-B-0505, for the operation of Special Operations Language Laboratories and Language Support Center at Fort Bragg, North Carolina.

We deny the protest.

The IFB, as amended, provided for bid opening on September 5, 1996, at 2 p.m., and did not authorize facsimile bids. EPA's bid was not included among those presented and opened at the scheduled bid opening; the protester's bid was delivered to the agency the next day.

EPA states that it sent its bid on September 4 via USAIR's express delivery service, and that the bid arrived at the Fayetteville airport in the early morning of September 5. EPA states that because of a hurricane, on September 5 the governor of North Carolina declared a state of emergency and issued an order for all companies and businesses within the state to cease business activities at noon. EPA states that at 1:30 p.m. on September 5, it called the agency and unsuccessfully requested that the bid opening be postponed or in the alternative that it be allowed to send a telefacsimile of its bid that was at the USAIR ticket counter at the Fayetteville airport, but could not be picked up because of the state of emergency.

The Army takes the position that it had no obligation to postpone bid opening. It states that its facility remained open until after completion of bid opening, and that since the protester's bid was not in the possession of the contracting officer at the time of bid opening, the bid was properly rejected as late.

Our Office has considered situations similar to the one involved here, where unusual events, such as a postal strike, National Day of Mourning, or severe weather conditions caused a delay in the receipt bids, with the result that the bids were rejected as late or bid opening was postponed. The decision to proceed with or postpone bid opening when such events occur is essentially a discretionary one; we therefore will not object to such a decision unless it is shown to represent an abuse of discretion. See 49 Comp. Gen. 733 (1970).

In this regard, Federal Acquisition Regulation § 14.402-3 (a)(2) provides that a bid opening may be postponed when emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid opening as scheduled is impracticable. Here, the unanticipated events did not interrupt normal government processes. At least four bidders responded to the IFB in a timely manner, and the Army was able to proceed with bid opening. Consequently, the refusal to delay bid opening is unobjectionable.

A bidder is responsible for delivering its bid to the proper place at the proper time; a bid is late if it does not arrive at the office designated in the solicitation by the time specified. See Martin G. Imbach, Inc., B-224536, Feb. 25, 1987, 87-1 CPD ¶ 215. Where, as here, a bid is delivered by a commercial carrier, the bid is regarded as a hand-carried bid. A late hand-carried bid may be considered where the protester shows that improper action on the part of the government is the sole or paramount cause of the bid's late receipt, such as where the delivery person attempts to deliver a hand-carried bid to the place designated for receipt but is prevented by government personnel from doing so. See Inland Marine Indus., Inc., B-233117, Feb. 16, 1989, 89-1 CPD ¶ 165. There is no showing of such improper action here.¹

The protest is denied.

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¹We also note that even if EPA's late bid had been accepted, EPA concedes in its comments that it does not meet the accreditation requirements set forth in the IFB; therefore, EPA appears to be ineligible for award.